

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH,  
NEW DELHI

Company Petition no. (IB)-976 (ND)/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Ramboll India Private Limited

.....Applicant

Versus

STI Infrastructure Limited

.....Respondent

*Judgment Delivered on: 07.01.20*

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**  
**MS. DEEPA KRISHAN, MEMBER (TECHNICAL)**

**For the Petitioner: Mr. Prasouk Jain, Mr. Karan Sinha & Mr. Subhranshu Mohapatra, Advocates.**

**For the Respondent: Mr. Anusuya Salwan & Ms. Nikita Salwan**

**ORDER**

**MS. DEEPA KRISHAN, Member (T)**

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 (for brevity 'the Rules') with a prayer for initiation of

Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor.

2. The applicant Ramboll India Private Limited filed this application and is engaged in the business of Consultancy Services provided for large scale construction projects.
3. The Respondent Corporate Debtor is a company incorporated on 17.07.2003 under the Companies Act, 1956, having its registered office at Suite No. 309, Baani Corporate One, Plot No.5, Commercial Centre Jasola, New Delhi.
4. It is further submitted by the applicant that the Respondent had agreed to pay the Applicant for Design Engineering Services of the ongoing projects in a stage-wise manner, as and when Ramboll submitted their reports and raised the requisite invoices against the completion and acceptance of those reports.
5. The applicant has also submitted that the applicant deputed the necessary project management teams and engineers to commence the Surveys, Field Investigation and detailed designs of each project in a timely fashion. The applicant has further submitted that as agreed upon and based on the fee schedules detailed in the Agreement, they submitted the necessary reports, made all requested changes and corrections and raised invoices on Corporate Debtor for each work completed stage-wise.



6. It is contended by the applicant that the applicant had issued a legal notice dated 14.09.2017 through their Legal Counsel, thereby notifying Corporate Debtor to make the payment of Rs. 49,25,756/- along with interest of 10% per annum, from the date the payments were due till actual realization of the amount, within a period of 15 days.

7. The applicant further stated that since full payments were not made, the applicant issued demand notice under Section 8 of the Code on 09.06.2018 in which the amount due was shown as Rs. 62, 76,806/- along with future interest @ 10% per annum till realization on the total outstanding. The Respondent replied to the said demand notice on 03.07. 2018. It is also stated that “*although work order for Consultancy Services and Design & Engineering Services with specific scope of work had been awarded to you for our different projects in the state of MP and Rajasthan and the same were expected to be performed as per mutually agreed time schedule in accordance with the requirement of our client and ultimate employer. But due to incomplete, delayed and under performance on your part the ultimate employer terminated the contracts and encashed the Performance Bank Guarantees of our client for (i) Seoni- Katangi Road Project, (ii) Garrawaraseoni- MDR road Project as a result of which our client suffered huge financial loss which ultimately led to severe financial loss to us. Also, the Suratgarh- Bikaner Project & Waraseoni- Lalbarra Road Project got delayed due to which*

*our client suffered you on account of consistent delay and incomplete performance by you".* It is also stated that the invoices on the basis of which claim has been made are wrong, false and baseless and also time barred.

8. Subsequently, the Applicant filed the application u/s 9 of IBC. In the part IV of the application the applicant has given the particulars of Operational Debt. It is stated that the total amount of debt due is Rs 49,25,756/- together with interest @ 10% p.a. amounting to Rs 13,51,050/- along with future interest @ 10% p.a. pending till realization on the total outstanding amount. Corporate Debtor had engaged the services of the erstwhile Gifford India Private Limited, now the Operational Creditor, for detailed Engineering design of various Road Construction Projects vide various agreements. The debt fell due on 27.12.2012 onwards and the last invoice generated by Operational Creditor on 31.01.2017. As per the ledger account filed with the application, the applicant raised invoice for technical design services provided from 10.01.2012 onwards till 09.11.2015. The last payment was received on 16.05.2015. Subsequently also the applicant raised further invoice till 31.01.2017 of Rs. 28, 59,158/-. As per the ledger account the Amount outstanding is 49, 25,756/-.

9. The respondent in its reply to the petition has raised a dispute regarding the claim of the applicant. It is stated that there were some differences

between the parties regarding the pending amount and they came to a settlement and accordingly Rs. 28, 49,168/- was paid as full and final settlement amount to the applicant. It is stated that a no claim declaration certificate dated 28.12.2015 was issued by the applicant that no amount was payable by the Corporate Debtor to the operational creditor and they had also waived all rights to make any further claim against the Corporate Debtor on account of work order. A copy of the acknowledgement and affirmation by the applicant for full and final settlement of the amount due and with no claim due has been filed by the corporate debtor before us. There is no amount pending to be paid by the respondent in 2015. An affidavit by one Mr. Surendra Agrawal (Project Manager) of Gifford India Private Limited being the authorised signatory has also been filed.

10. The applicant in its rejoinder has denied the fact of full and final settlement between the parties and submitted that the document attached in the reply are fabricated as their ex-employee Mr. Surendra Agrawal is now a director of Respondent Corporate Debtor who was never authorised to execute any document on behalf of the applicant. It is also stated that the stamp paper on which the above-mentioned affidavit was given was purchased on 31.10.2012 though the affidavit was signed by both the parties on 28.12.2015.

11. We have gone through the record and considered arguments made before us. It is stated that a full and final settlement was arrived between the

parties on 28.12.2015 and Rs.28, 49,168/- are paid. The reply is silent about the four invoices stated to be raised thereafter. The details of the said invoices are given below:

- a. Invoice dated 04.03.2016 for Rs. 1,94,650/-
- b. Invoice dated 29.09.2016 for Rs. 2,93,250/-
- c. Invoice dated 21.12.2016 for Rs. 17,36,500/-
- d. Invoice dated 31.01.2017 for Rs. 6,35,375/-

12. During oral argument the Corporate Debtor has stated that the invoices raised in 2016 were included in the payment made in December 2015. This argument appears far-fetched. As part of the rejoinder the E-mail correspondence between the parties corresponded between the parties in the year 2016-17 have also been filed before us. Their email correspondence shows that a final settlement had not been reached between the parties and there invoices continuing to in December 2015. The Corporate Debtor was given time to counter the document filed by the Operational Creditor along with the rejoinder. However, the Corporate Debtor has not been able to give any evidence to counter their documents.

13. In view of the above discussion we are satisfied that the present application is complete and there has been default of payment of dues to the applicant on account of services rendered by them to the CD.



Therefore, on fulfilment of the requirements of section 9 (5) (i) (a) to (d) of the Code, the present application is admitted.

14. The applicant in the Part III of the application the applicant has proposed the name of Ms Maya Gupta as an IRP and have also filed a consent letter from her. Her registration number is IBBI/IPA-002/IP-N00363/2017-18/11061. The Interim Resolution Professional has filed necessary declaration in accordance with the IBBI Regulations and the provisions of the Code. Accordingly Ms Maya Gupta is appointed as an IRP.

15. In pursuance of Section 13 (2) of the Code we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Regulations) with regard to admission of this application under Section 9 of the Code.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d). Thus, the following prohibitions are imposed:

*“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law,*

*tribunal, arbitration panel or other authority;*



(b) *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

(c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

(d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”*

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor and may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition as per the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.



18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest possible but not later than seven days from today.



20. Let the copy of the order be supplied to the parties including the Board.

*Sd/-*  
(Deepa Krishan)

Member Technical



*Sd/-*  
(Ina Malhotra)

Member Judicial

*Raju* : 14/11/2019  
द.व.व. राजु / V.V.B. RAJU  
उप पंजीयक / DEPUTY REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकारण  
NATIONAL COMPANY LAW TRIBUNAL  
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FILE OF COSTUMES